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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/777,837 | 02/12/2004 | Dmitry Grebenev | 063170.6803 | 5897 |

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EXAMINER

PHAN, THAI Q

ART UNIT PAPER NUMBER

2128

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,837

Applicant(s)

GREBENEV, DMITRY

Examiner

Thai Q. Phan

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to patent application S/N: 10/773,837. Claims 1-13 are pending in the Action.

Drawings

The drawings filed on 02/12/2004 are acceptable for examination.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Reynolds et al, US patent no. 5,784,549.

As per claim 1, Reynolds anticipates a fail-safe bootstrapping for a computer system having an operating system with feature limitations identical to the claimed invention (Background of the invention and col. 2, lines 30-49). According to Reynolds, the functional simulation and emulation method includes steps:

intercepting an operating system call from an application at kernel level (col. 4, line 65 to col. 5, line 18, col. 7, line 8 to col. 8, line 10, col. 9, lines 24-38), determining whether the operating system call was from a process identified in the failure or fail/safe emulation (col. 5, lines 19-30, cols. 6-8),

consulting user loaded rules or device driver programs for configurations and fail/safe operation (cols. 6-7), and calling a native operating system routines for services of the system call (col. 5, lines 19-61).

As per claims 2-4, Reynolds anticipates system call for a process identifier, fail/safe mode or failure emulation for fail/safe mode operation, return values for fail/safe test or failure emulation (cols. 5-8).

As per claim 5, Reynolds anticipates a fail-safe bootstrapping for a computer system having an operating system with feature limitations identical to the claimed invention. According to Reynolds, the functional simulation/emulation method includes steps: identifying and intercepting an operating system call from an application at kernel level (col. 4, line 65 to col. 5, line 18, col. 7, line 8 to col. 8, line 10, col. 9, lines 24-38), determining whether the operating system call was from a process identified in the failure or fail/safe emulation (col. 5, lines 19-30, cols. 6-8), consulting and transmitting user loaded rules or device driver programs for configurations and fail/safe operation (cols. 6-7), and calling a native operating system routines for services of the system call (col. 5, lines 19-61).

As per claims 6 and 7, Reynolds anticipates the claim limitations for handling system calls and external device drivers for fail/safe operations.

Similarly, claims 8-13 are directed to a system and a computer program product in a storage device with functional modules when executed to perform functional steps as in the method claims above. Reynolds thus anticipates claims 8-13.

Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. US patent no. 6,075,939, issued to Bunnell et al, on June 2000
2. US patent no. 6,393,605, issued to Loomans, Jeffrey, on May 2002
3. US patent no. 6,948,165 B1, issued to Luu et al, on Sept. 2005
4. US patent application publication no. US 2003/0093258, issued to Fishstein et al.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai Q. Phan whose telephone number is 571-272-3783. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached on 571-272-2279. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Feb. 06, 2006



Thai Phan
Patent Examiner